

Response under 37 CFR 1.111
Serial No. 09/875,184
Attorney Docket No. 010493

REMARKS

Claims 1 - 4 are pending in the present application. No amendments were made by the present response. Reconsideration of the claims is respectfully requested in view of the following discussion.

As to the Merits:

As to the merits of this case, the Examiner sets forth the following new rejections:

claim 1 stands rejected under 35 USC 103(a) as being unpatentable over Tyberg et al. (U.S. Patent No. 6,270,726, of record) in view of Beinert et al. (U.S. Patent No. 6,506,611) or in the alternative Shalon et al. (U.S. Patent No. 6,309,891, newly cited);

claim 2 stands rejected under 35 USC 102(e) as being anticipated by Astle et al. (U.S. Patent No. 6,645,431);

claim 3 stands rejected under 35 USC 103(a) as being unpatentable over Shultz et al. (U.S. Patent No. 6,033,911, of record) in view of Ade et al. (U.S. Patent No. 5,853,665, of record); and

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claims 1, 2 and 4 stand rejected under 35 USC 103(a) as being unpatentable over Schultz et al., in view of Tyberg et al. in view of Beinert et al. and further in view of Astle et al.

Each of these rejections is respectfully traversed.

Independent Claim 1:

It is respectfully submitted that the rejection of claim 1 based on Beinert et al. (U.S. Patent No. 6,506,611) is improper since Beinert et al. fails to qualify as prior art under 35 U.S.C. §§102 and 103.

More specifically, Beinert et al. have a filing date of February 5, 2001, which falls after the foreign priority date of June 22, 2000 of the present invention. Further, since the Beinert et al. reference is a continuation of an International Application filed on August 6, 1999, which was prior to November 29, 2000, no benefit of the International filing date is given for section 102(e) prior art purposes.

Moreover, in order to perfect the filing date of the present application and thereby establish the foreign priority date of June 22, 2000 as the effective filing date for the present application, Applicants enclose herewith a verified English translation of the Japanese priority

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document JP2000-187928 of the present application. Accordingly, withdrawal of the rejection of claim 1 based on Beinert et al. is respectfully requested.

In addition, with regard to rejection of claim 1 based on the Shalon et al. reference, the Examiner fails to provide any arguments or motivation concerning the combination of Tyberg and Shalon et al. As such, it is respectfully submitted that the Examiner has failed to meet his burden of establishing a *prima facie* case of obviousness with regard to the combination of Tyberg and Shalon et al.. Accordingly, withdrawal of the rejection of claim 1 based on Shalon et al. is respectfully requested.

Independent Claim 2:

It is respectfully submitted that the rejection of claim 2 is improper since Astle et al. (U.S. Patent No. 6,645,431) fails to qualify as prior art under 35 U.S.C. §§102 and 103. More specifically, Astle et al. (U.S. Patent No. 6,645,431) have a filing date of January 22, 2001, which falls after the foreign priority date of June 22, 2000 of the present invention. Further, as discussed above, the applicants perfected the filing date of the present application and thereby establish the foreign priority date of June 22, 2000 as the effective filing date for the present application. Accordingly, withdrawal of the rejection of claim 2 based on Astle et al. (U.S. Patent No. 6,645,431) is respectfully requested.

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Independent Claim 3:

It is respectfully submitted that the rejection of claim 3 based on Shultz and Ade was inadvertently made by the Examiner, since the Examiner clearly acknowledges that “[t]he previous rejection of claim 3 is being withdrawn for Shultz does not teach the buffer tank with a two-port configuration as claimed by applicant.”¹

That is, as acknowledged by the Examiner, the tank 50 of Shultz fails to include two ports, as called for in claim 3. Accordingly, withdrawal of the rejection of claim 3 is respectfully requested.

Independent Claims 1, 2 and 4:

It is respectfully submitted that the rejection of claims 1, 2, and 4 based on Beinert et al. and Astle et al. is improper since, as discussed above, both Beinert et al. and Astle et al. fail to qualify as prior art under 35 U.S.C. §§102 and 103. Accordingly, withdrawal of this rejection of claims 1, 2 and 4 is respectfully requested.

In view of the aforementioned remarks, Applicants submit that that the claims are in condition for allowance. Applicants request such action at an early date.

¹ Please see, lines 20-21, page 2 of the Action.

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If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



Thomas E. Brown

Attorney for Applicants
Registration No. 44,450
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

TEB/jl

Attachment: Verified English translation of Japanese foreign priority document JP2000-187928